



CITY OF SAN JOSÉ, CALIFORNIA

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 17, 2004

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room 600, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

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Upon motion unanimously adopted, Council recessed at 9:36 a.m. to a Closed Session in Room 600, (A) to confer with Legal Counsel to discuss existing litigation pursuant to Government Code Section 54956.9; subsection (a) considering the case(s) of: (1) In re Larkowski; (2) SBC Communications v. City of San José, et al.; (3) Segerstrom v. City of San José, et al.; (4) Sharp, et al. v. City, et al. (District 2); (B) to confer with Real Property Designated Representatives, Paul Krutko, OED, City of San José, and Richard Papsin, FMC, pursuant to Government Code Section 54956.8, pertaining to property located at 1125 Coleman Avenue; (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Municipal Employees Federation; (4) Confidential Employees Organization; (5) City Association of Management Personnel; (6) Association of Maintenance Supervisory Personnel; (7) Operating Engineers, Local 3; (8) International Brotherhood of Electrical Workers; (9) Association of Building and Mechanical and Electrical Inspectors.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:45 a.m. and reconvened at 1:33 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

INVOCATION

Mictlan Aztec Dancers performed a ceremonial dance depicting "thanking the Earth". (District 7)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Chavez, seconded by Council Member Williams, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved. (11-0).

CEREMONIAL ITEMS

1.2 Presentation of a proclamation declaring August Breastfeeding Awareness Month. (Chavez)

1062 (Rules Committee referral 8/11/04)

Action: Mayor Gonzales and Council Member Chavez presented a proclamation to Kathy Sweeney, Public Health Nutritionist, Santa Clara County Nutrition and Wellness, and Forlyn Verano Talfinger MS RD, Assistant Dietitian, declaring August 2004 "Breastfeeding Awareness Month" in the City of San José.

CONSENT CALENDAR

2.1 Approval of City Council Minutes for:

- (a) Regular meeting of June 22, 2004
- (b) Joint Council/Redevelopment Agency Board meeting of June 22, 2004
- (c) Regular meeting of June 29, 2004
- (d) Joint Council/Redevelopment Agency Board meeting of June 29, 2004

Documents Filed: (1) Regular Meeting Minutes dated June 22, and June 29, 2004. (2) Joint Council/Redevelopment Agency Board Meeting Minutes dated June 22, and June 29, 2004.

Action: The Minutes were approved. (11-0).

2.3 Acceptance of the finding reports from Kafoury, Armstrong, & Company, LLP for the quarter ending March 31, 2004, relating to the Bay 101 Conditional Approval of Stock Transfer. (City Auditor)

1151

Documents Filed: Memorandum from City Auditor Gerald Silva, dated August 2, 2004, transmitting reports.

Action: Reports accepted. (11-0).

2.4 Adoption of the following appropriation ordinance and funding sources resolutions amendments in the General Fund:

- 15648
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5702
- (a) **Increase the revenue estimate for Revenue from the Federal Government by \$397,640.**
 - (b) **Increase the Library Grants appropriation by \$397,640.**
- CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from Library Director Jane Light, and Budget Director Larry Lisenbee, dated July 28, 2004, recommending adoption of the appropriation ordinance and resolution.

Action: Ordinance No. 27227, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Moneys in the General Fund for the Library Grants; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 72275, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the General Fund", were adopted. (11-0).

2.5 Approval to reject the proposal for the service of Photo Radar Notification and Processing and authorization for the Director of General Services to negotiate an agreement with Redflex Traffic Systems, Inc. CEQA: Not a Project. (General Services)

1192

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated July 28, 2004, recommending approval to reject proposal, and authorization to negotiate an agreement with Redflex Traffic Systems, Inc.

Action: The agreement was approved. (11-0).

2.6 Adoption of the following appropriation ordinance and funding source resolution amendments in the General Fund to do the following:

- 15648
- (a) **Establish a citywide appropriation of \$1,640,000 to the City Manager's Office for the Urban Area Security Initiative.**
 - (b) **Increase the Earned Revenue Estimate from the Federal Government by \$1,640,000.**

CEQA: Not a Project. (Emergency Services/City Manager's Office)
(Rules Committee referral 8/11/04)

Documents Filed: Memorandum from Director of Department of Emergency Services Frances Edwards, and Budget Director Larry Lisenbee, dated August 9, 2004, recommending adoption of the appropriation ordinance and resolution.

2.6 (Cont'd.)

Action: Ordinance No. 27228: entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Moneys in the General Fund for the Urban Area Security Initiative Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 72276, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the General Fund", were adopted. (11-0).

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – August 4, 2004
Vice Mayor Dando, Chair

15601

Documents Filed: The Rules Committee Report, dated August 4, 2004.

(a) Redevelopment Agency items reported out at Redevelopment Agency meeting

(b) City Council

(1) Review August 17, 2004 Draft Agenda

The Committee recommended two additions to the August 17, 2004 City Council agenda.

(2) Add New Items to August 10, 2004 Amended Agenda

- Mayor and Council Member Requests
- City Manager Requests
- City Attorney Requests
- City Clerk Requests

The Committee recommended two additions to the August 10, 2004 City Council agenda.

(3) List of Reports Outstanding. Attachment: Report from the City Manager, dated August 3, 2004, transmitting the outstanding Staff reports for August 10, 2004.

The Committee noted and filed the City Manager's report listing three Staff reports outstanding for the August 10, 2004 Council agenda.

3.2 Report of the Rules Committee – August 4, 2004 (Cont'd.)
Vice Mayor Dando, Chair

- (c) Legislative Update
 - (1) State

Director of Intergovernmental Relations Betsy Shotwell advised the Committee that the Governor of the State of California signed the State Budget.

- (2) Federal - There was no report.

- (d) Meeting Schedules - There were none.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated June 24, 2004, transmitting the items for public record for the period of June 16-June 22, 2004, and June 23-July 27, 2004.

The Committee noted and filed the Public Records.

- (f) Appointment to Boards, Commissions and Committees
 - (1) Summary of Commission Vacancies. Attachment: Summary of Volunteer Commission Vacancies, dated July 28, 2004.

The Committee requested additional information about the process of reappointing incumbent commissioners. The Committee directed the City Clerk to present a report next week summarizing how many of the 26 vacancies currently being recruited for, are actually positions in which the incumbent is eligible to reapply.

- (2) CDBG Steering Committee. Attachment: Memorandum from City Clerk Lee Price, dated July 30, 2004, recommending appointment to the CDBG Steering Committee.

The Committee recommended the reappointment of Maria Lopez as the District 7 representative on the CDBG Steering Committee to a term ending June 30, 2007.

- (g) Rules Committee Reviews, Recommendations and Approvals

There were none.

- (h) Oral communications - None were presented.

3.2 Report of the Rules Committee – August 4, 2004 (Cont'd.)
Vice Mayor Dando, Chair

- (i) Adjournment - The meeting was adjourned at 2:19 p.m.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Report of the Rules Committee and the actions of August 4, 2004, were accepted. (11-0.)

3.4 Interview of Elections Commission applicants, and appointment of Commission member. (City Clerk)

1628

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated August 11, 2004, highlighting major areas of potential conflict that may be disclosed by the applications. (2) Memorandum from City Clerk Lee Price, dated August 12, 2004, transmitting applications for the Elections Commissions.

Discussion: Mayor Gonzales and the Council Members interviewed Mr. Fred de Funiak, the only candidate for the Elections Commission.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Williams, and carried, Fred de Funiak was appointed to the Elections Commission. (9-2. Noes: LeZotte, Yeager.)

- 3.5 (a) Confirm direction contained in the 2004-2005 Mayor's June Budget Message, approved by the City Council as part of adoption of the 2004-2005 Operating Budget, regarding the 2004-2005 General Fund Rebalancing Plan to utilize the Compensation/State Budget Impact Contingency Plan Earmarked Reserve totaling \$2.0 million and implement a new Emergency Communication System Support Fee to resolve the \$11.4 million General Fund revenue shortfall created by State Budget balancing actions.**
- (b) Approve an Ordinance amending Title 8 of the San José Municipal Code to add a new Chapter 8.20 establishing an Emergency Communication System Support Fee and amending Chapter 4.80 of Title 4 of the San José Municipal Code to add a new Part 51 establishing the Emergency Communication System Support Fee Fund.**
- (c) Direct staff to return with the following actions on August 31, 2004:**
- (1) Appropriation Ordinance and Funding Sources Resolution amendments and amendments to applicable fee resolutions necessary to implement the above actions; and**
 - (2) Resolution approving implementation of the rerouting of wireless 9-1-1 service from the State of California to the City of San José ("San José Wireless E9-1-1 Project"), pursuant to Public Utilities Code Section 2892 and authorizing the City Manager to negotiate and execute all documents necessary to complete the San José Wireless E9-1-1 Project.**

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3.5 (Cont'd.)

Documents Filed: (1) Memorandum from City Manager Del Borgsdorf, dated August 13, 2004, recommending as stated above. (2) Memorandum from City Attorney Richard Doyle, dated August 13, 2004, transmitting the proposed ordinance. (3) Letter from Tri-County Apartments, dated August 17, 2004, regarding the Emergency Communication Systems Support Fee proposal.

Public Comment: Jim Cunneen, San José Silicon Valley Chamber of Commerce expressed opposition to the 911 fee, and argued it should go to the voters. Bob Hines, Tri-County Apartment Association objected to the 911 fee, and asked Council to reconsider. Leon Beauchman, SBC, expressed opposition to the fee because it will create an incentive for businesses to use other telephone service providers. William Garbett also expressed opposition.

Motion: Council Member Chavez moved approval of the Staff recommendation. Council Member LeZotte seconded the motion.

Discussion: A lengthy debate ensued among the Council Members.

Vice Mayor Dando voiced opposition because Public Safety that should never be linked to a special fee or fund. She added that it is the wrong time to adopt a new fee, and argued that it would be a disincentive to business.

Council Member Reed reiterated his view that this tax should go the voters, and he will not supporting it.

Council Member Gregory also expressed opposition and argued there have not been enough discussions with the business community.

Council Member Williams requested Staff return with a report on the impact of the fee on local businesses and to ensure outreach efforts are being made.

Mayor Gonzales spoke in favor of adopting the fee, although reluctantly. He pointed out that the fee was part of the June Budget balancing strategy approved by the Council to respond to the State Budget takeaways.

Action: On a call for the question, the motion carried, and the direction contained in the 2004-2005 Mayor's June Budget Message, was approved; Ordinance No. 27229, entitled: "An Ordinance of the City of San José Amending Title 8 of the San José Municipal Code to Add a New Chapter 8.20 Establishing an Emergency Communication System Support Fee and Amending Chapter 4.80 of Title 4 to Add a New part 51 Establishing the Emergency Communication System Support Fee Fund", was passed for publication; with direction to Staff to return on August 31, 2004 with appropriation ordinance and funding sources resolution amendments, and a resolution approving implementation of the rerouting of wireless 9-1-1 service; with Staff requested to determine the impact of the fee on local businesses, and further, to ensure adequate outreach efforts to local businesses. (8-3. Noes: Dando, Gregory, Reed.)

- 5053 3.6 (a) Approval of the first amendment to the City's agreement with San José Water Company for the New San José City Hall Project increasing the estimated amount of the agreement by \$33,590 for a total estimated amount of \$199,172, and revising the scope to include additional fire hydrant work. CEQA: Resolution No. 68905, PP98-03-072. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated July 28, 2004, recommending approval of the first amendment.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the agreement was approved. (11-0).

- 3.6 (b) Adoption of a resolution:
- (1) Finding that solicitation of bids for the installation of tenant improvement security system equipment work for the New City Hall Project would be an idle act under the City's Municipal Code, Section 14.04.170; and,
 - (2) Execute a contract change order to Rosendin Electric, Inc., for the installation of security system equipment in the amount of \$715,000.

CEQA: Resolution No. 68905, PP98-03-072. (Public Works)

Documents Filed: None.

Action: Item 3.6(b) was deferred to August 24, 2004.

- 6026 3.7 (a) Adoption of a resolution amending Resolution No. 72227, adopted at the June 29, 2004 City Council Meeting, to extend the period of time for the City Manager to negotiate for the purchase, installation and integration of an Integrated Utility Billing, Customer Service and Performance Management System (CUSP) with BearingPoint/PeopleSoft.

- 1328 (b) Reject all proposals received for a Customer Information System (CIS) Vendor Selection Consultant and re-issue a modified Request for Qualifications (RFQ) to contract with an independent third-party CIS consultant to:

- (1) Assist the City with a business process gap analysis;
- (2) Assist the City in contract negotiations with BearingPoint/PeopleSoft;
- (3) Provide technical architecture support related to the development of the contract scope of services with BearingPoint/PeopleSoft; and,
- (4) Provide project quality assurance services.

CEQA: Not a Project. (Finance)
(Deferred from 8/10/04 – Item 3.4)

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated July 30, 2004, recommending adoption of resolution. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated August 12, 2004, transmitting additional information.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

3.7 (Cont'd.)

Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, Resolution No. 72277, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72227 to Extend the Period of Time to Negotiate with BearingPoint/PeopleSoft Relating to the Integrated Utility Billing, Customer Service and Performance Management System", was adopted; and rejection of all proposals received for a Customer Information System (CIS) Vendor Selection Consultant, and re-issuance of a modified Request for Qualifications, were approved. (11-0).

3.8 **Accept the City Manager's follow-up report on the process for a Converged Data Network and Telephony System for the New City Hall (NCH). (City Manager's Office)** **(Orders of the Day)**

5053

Documents Filed: Memorandum from City Manager Del Borgsdorf, dated August 16, 2004, transmitting the follow-up report.

Discussion: City Manager Del Borgsdorf presented an overview on the process for a Converged Data Network and Telephony System for the New City Hall.

A short discussion among the Council Members ensued, resulting in direction as noted below in "Action".

Public Comment: Mark Jansen offered his expertise and independent services.

Action: Upon motion by Council Member Yeager, seconded by Council Member Williams, and carried unanimously, the report from the City Manager was accepted, with Staff directed to forward weekly reports to Council. (11-0).

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.3 **Adoption of a resolution:**

- (a) **Approving a Purchase Agreement with FMC Corporation for the purchase of 74.87 acres of property located at 1125 Coleman Avenue at a price of \$81,539,960.**
 - (b) **Approving a Right of Entry Agreement and Easement for the property located at 1125 Coleman Avenue.**
 - (c) **Approving the Covenants, Conditions and Restrictions (CC&Rs) for the property located at 1125 Coleman Avenue.**
- (Economic Development)**

Documents Filed: None.

Action: Item 4.3 was dropped. Refer to San José Financing Authority Agenda, Item 2 for Council Action taken.

RECREATION & CULTURAL SERVICES

- 5.2 Adoption of a resolution approving a one-month animal license amnesty program.
CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)
(Deferred from 6/15/04 – Item 5.7)

Documents Filed: None.

Action: Deferred to August 31, 2004.

TRANSPORTATION SERVICES

- 6.2 Adoption of a resolution amending Resolution No. 71324 effective July 1, 2004 to:
- (a) Increase the flat rate per tow as consideration for the privilege of providing City-generated tows to \$50.95;
 - (b) Increase the maximum rates that tow contractors may charge vehicle owners for basic tows to \$112.09 per tow.
- CEQA: Not a Project. (Planning, Building and Code Enforcement).
(Deferred from 6/8/04 – Item 6.2 and 6/15/04 – Item 6.3)

Documents Filed: None.

Action: Item 6.2 was dropped.

PUBLIC SAFETY SERVICES

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9.1 Adoption of a resolution authorizing the City Manager to submit an application for the FY 2004-2005 Metropolitan Medical Response System Program Continuation Grant with the U.S. Department of Homeland Security, to accept the grant if awarded, and to execute all related grant documents. CEQA: Not a Project. (Emergency Services)

Documents Filed: Memorandum from Director of Department of Emergency Services Frances Edwards, dated August 10, 2004, recommending adoption of resolution.

Action: Upon motion by Council Member Williams, seconded by Council Member Reed, and carried unanimously, Resolution No. 72278, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the U.S. Department of Homeland Security for a FY 2004-2005 Continuation Grant for the Metropolitan Medical Response System Program in an Amount Not To Exceed \$400,000, To Accept the Grant if Awarded, and To Execute All Related Documents", was adopted. (11-0).

9.2 Adoption of a resolution adopting the 2004 Emergency Operations Plan for the City of San José. CEQA: Not a Project. (Emergency Services)

1763

Documents Filed: Memorandum from Director of Department of Emergency Services Frances Edwards, dated July 8, 2004, recommending adoption of resolution.

Discussion: (1) Director of Department of Emergency Services Frances Edwards presented an overview of the 2004 Emergency Operations Plan for the City of San José. (2) Staff presentation of the City of San José 2004 Emergency Operations Plan.

A short discussion among the Council Members ensued, resulting in direction as noted below in "Action".

Motion: Council Member Reed moved approval of the Staff recommendation, including Staff to devise a solution to address how to ensure a quorum of the Council during an emergency. Vice Mayor Dando seconded the motion.

Council Member Campos stated it is important to define each Council Member's role clearly. She added that the role should be more than policy making and include an operational function.

Action: On a call for the question the motion carried unanimously, and Resolution No. 72279, entitled: "A Resolution of the Council of the City of San José Adopting the 2004 Emergency Operations Plan for the City of San José", was adopted, with Staff directed to discuss with each Council Member the type of involvement and role for each; to compile and route an informational memorandum defining each Council Member's role clearly; and to return with a solution to establish proxies and/or otherwise address how to ensure a quorum of the Council during an emergency. (11-0.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 3:23 p.m. to consider Item 10.1 in a Joint Session.

10.1 (a) City Council and Redevelopment Agency Board approval of a Cooperation Agreement providing for the City's and the Agency's rights and obligations with respect to the California Theatre, the transfer of title to the California Theatre to the City of San José, and the Agency's warranty of construction defects. CEQA: Resolution No. 68839, RCP00-02-001, and RSP02-004. Council District 3. (City Manager's Office/Redevelopment Agency)

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(b) Adoption of a resolution authorizing the City Manager to negotiate and execute a Facility Use Agreement with Opera San José for the use of the California Theatre for a period of ten (10) years, at an amount paid to the City of ten thousand dollars (\$10,000) per production, with up to four (4) productions for the first four (4) years and up to five (5) productions for the next six (6) years. (City Manager's Office)

(Rules Committee referral 8/11/04)

10.1 (Cont'd.)

Documents Filed: (1) Memorandum from City Manager Del Borgsdorf, and Redevelopment Agency Interim Director Harry Mavrogenes, dated August 6, 2004, recommending approval of cooperation agreement. (2) Memorandum from Deputy City Manager Kay Winer, dated August 11, 2004, recommending approval of facility use agreement.

Motion: Council Member Chavez moved approval of the Staff recommendation. Vice Mayor Dando seconded the motion.

Public Comment: Alex Marthews, Preservation Action Council of San José, spoke in favor the Staff recommendation, and describing the California Theatre as an enormous asset to the City of San José.

Action: On a call for the question, the motion carried unanimously, the cooperation agreement was approved, and Resolution No. 72280, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Facility Use Agreement with Opera San José for Use of the California Theatre", was adopted. (11-0.)

The Redevelopment Agency Board portion of the meeting was adjourned at 3:25 p.m.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

None.

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

None.

OPEN FORUM

- (1) M. Shakeri spoke of easement rights of property owners and various societal issues.

RECESS/RECONVENE

The City Council recessed at 4:45 p.m. from the Joint City Council/Redevelopment Agency Board, and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

- 13362 1.1 **Presentation of plaques to Sandra Gouveia for 6 years service on the Disability Advisory Commission; to Herman Levy for 4 years 4 months service on the Human Rights Commission; to George Berhito for 4 years service on the Library Commission; to Dagmar Poffenroth for 8 years service on the Parks and Recreation Commission; to Nancy Hikoyeda for 4 years service on the Senior Citizens Commission; to Frances Schwab for 4 years service on the Senior Citizens Commission; to Mitchell Ehrlich for 5 years service on the Traffic Appeals Commission; to Kerri Lawnsby-Corney for 4 years service on the Traffic Appeals Commission; and to Jessica Nguyen for 1 year 8 months service on the Youth Commission. (Mayor)**

Action: Mayor Gonzales presented plaques to Sandra Gouveia, Dagmar Poffenroth, Nancy Hikoyeda, Frances Schwab, and Jessica Nguyen for their dedicated service on the various Commissions. George Berhito, Mitchell Ehrlich, and Kerri Lawnsby-Corney were not present, and the plaques will be sent. Herman Levy passed away recently, and a friend accepted the plaque for his family.

PUBLIC HEARINGS

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, the below noted continuances were granted. (11-0).

- 1088 11.1 **Public Hearing on and consider approval of an ordinance amending Section 20.50.100 of Title 20, the Zoning Code, of the San José Municipal Code to modify the uses allowed in the Industrial Zoning Districts.**
CEQA: Exempt, PP04-03-073. SNI Area: All. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Planning Commission Secretary Stephen Haase, dated July 29, 2004, transmitting the Planning Commission recommendation.

11.1 (Cont'd.)

Public Comment: Mayor Gonzales opened the Public Hearing, and there was no public testimony. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and carried unanimously, the recommendation of the Planning Commission was approved, and Ordinance No. 27231, entitled: "An Ordinance of the City of San José Amending Section 20.50.100 of Chapter 20.50 of Title 20 of the San José Municipal Code to Allow Additional Uses in the Industrial Zoning Districts of the City", was passed for publication. (10-0-1. Absent: Campos.)

11.2 Public Hearing on Conforming Rezoning of the property located at the northwest corner of Santa Teresa Boulevard and Cahalan Avenue (6095 Cahalan Avenue), from CP Commercial Pedestrian Zoning District to CN Commercial Neighborhood Zoning District, to allow commercial uses on a 1.8-acre site (existing gasoline service station). (YBM, Inc., Owner/Applicant). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.

19066

C 04-027 - District 10

(Continued from 5/18/04 – Item 11.10 and 6/1/04 – Item 11.1)

Documents Filed: (1) Proof of publication of Notice of Public Hearing, executed on May 4, 2004, submitted by the City Clerk. (2) Email from the public regarding the subject rezoning.

Action: Item 11.2 was dropped. Heard by Council on August 10, 2004.

11.3 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning located on the west side of Masonic Drive, south side of Almaden Expressway (2455 Masonic Drive), from A-Agriculture Zoning District to A(PD) Planned Development Zoning District, to allow up to 172 single-family attached residences and a 1.3 acre public park on a 4.6 gross acre site. (San José Scottish Rite Foundation, Owner; Vitoil, Inc./Stefan Martirosian, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).

19066

PDC04-010 - District 6

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-010, dated August 11, 2004, recommending approval on the Planned Development Rezoning. (2) Memoranda from Planning Commission Secretary Stephen Haase, dated July 28, and August 12, 2004, transmitting the Planning Commission recommendation. (3) Proof of publication of Notice of Public Hearing, executed on July 30, 2004, submitted by the City Clerk.

11.3 (Cont'd.)

Public Comment: Mayor Gonzales opened the Public Hearing, and there was no public testimony. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Yeager, seconded by Council Member LeZotte, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27232, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Masonic Drive, Approximately 520 Feet Southerly of Canoas Garden Avenue to A(PD) Planned Development Zoning District", was passed for publication, including, during the Planned Development Permit stage, Staff was directed to continue to work with the architect in order to ensure high quality design standards. (11-0.)

- 11.4 **Public Hearing on and consider approval of an ordinance on Planned Development Rezoning located on the east side of North Fourth Street, approximately 170 feet northerly of Washington Street (424 North Fourth St.), from LI Light Industrial District to A(PD) Planned Development Zoning District, to allow the relocation of the historic single-family residence from 507 Almaden Avenue to a 0.13 gross acre site in the Hensley Historic District. (Neighborhood Housing Services Silicon Valley, Attn. Edward Moncrief, Owner/Developer). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-1-1).**

19066

PDC 04-061 - District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-061, dated August 4, 2004, recommending approval on the Planned Development Rezoning. (2) Memoranda from Planning Commission Secretary Stephen Haase, dated July 28, and August 12, 2004, transmitting the Planning Commission recommendation. (3) Proof of publication of Notice of Public Hearing, executed on July 21, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing. Erik Schoennauer, representing the Hensley Historic District, spoke in favor of the Planning Development Rezoning. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27233, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of North Fourth Street Approximately 170 Feet Northerly of Washington Street", was passed for publication. (11-0.)

- 11.5 **Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located at the southwest corner of Silver Creek and Aborn Roads, from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District, to allow up to 70,000 square feet of retail, 50,000 square feet of medical office or an 80-bed assisted living facility for the elderly, and unimproved land to be dedicated for public park purposes on a 7.5 gross acre site. (Feng Li-Chu And Shen Chung-Guang, Lii Ruey-Rong & Lih-Woan, Shen Chung Guang, Huang Ying-Ming, Huang Chen-Huei, Owners; Barry Swenson Builder, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

PDC04-008 - District 7

(Continued from 8/10/04 – Item 11.3)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC04-008, dated July 20, 2004, recommending approval on the Planned Development Rezoning. (2) Memoranda from Planning Commission Secretary Stephen Haase, dated July 21, and August 12, 2004, transmitting the Planning Commission recommendation. (3) Proof of publication of Notice of Public Hearing, executed on July 14, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the Public Hearing, and there was no public testimony. Mayor Gonzales closed the Public Hearing.

Action: Upon motion by Council Member Gregory, seconded by Council Member Cortese, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27234, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Silver Creek Road and Aborn Road to A(PD) Planned Development Zoning District", was passed for publication, with Staff directed to work with the neighborhood to address existing traffic challenges within the area of Aborn, Silvercreek, and King Roads, and further, to keep Council Members Cortese and Gregory apprised of efforts to ease traffic congestion. (11-0.)

OPEN FORUM

- 1229 (1) Independent Journalist Michael Bratford expressed concerns regarding Police Department shootings.

ADJOURNMENT

1053

The Council of the City of San José was adjourned in memory of Penny Irene Zanotto; and in memory of Lucille Turner, mother of Randal Turner, Deputy Director in Public Works and mother-in-law to Lisa Turner, Accounting Technician in Environmental Services.

The Council of the City of San José was adjourned at 7:20 p.m.



RON GONZALES, MAYOR

ATTEST:



LEE PRICE, CMC, CITY CLERK

smd/08/17/04min